

**Remarks/Arguments**

This is in reply to the official action of August 2, 2006. The only amendment made is to correct an obvious typographical type error in claim 31. This amendment clearly raises no new issues and presents no new matter. It was not made earlier since the discovery of the error only occurred upon review of the claims with respect to this response.

Allowance of claim 2 and claims 14-30 is noted with appreciation.

Claim 1 has been rejected under 35 U.S.C. 102 as being anticipated by U.S. Patent 6,235,014 to Abe et al. This rejection is improper and should be withdrawn.

Claim 1 requires "A device for controlling functions of a microscope within a microscope system, said device comprising: a stand base portion, a central display integrated into the stand base portion, wherein the central display can be used to perform a plurality of settings of the microscope within the microscope system, to call saved settings of the microscope within the microscope system and to receive warning messages or notifications from the microscope within the microscope system."

In applying Abe et al., the Examiner states: "Abe discloses a device for controlling microscope functions including a display (3) integrated into a stand base portion, wherein the display can be used to perform settings of the microscope, call saved settings, and display warnings or notifications from the system (see also figs. 1-3).

This statement by the Examiner with respect to the disclosure of Abe et al. is incorrect and even if it were correct is insufficient to support a rejection under either 35 U.S.C. 102 or 103.

Present claim 1 requires: A device for controlling functions of **a microscope within** a microscope system...” It is clear that the claim requires control of microscope functions as microscope functions would be understood by one skilled in the art. A “microscope” as defined in McGraw Hill’s Dictionary of Scientific and Technical Terms, 2nd edition, (1978) at page 1023 as “An instrument through which minute objects are enlarged by means of a lens or lens system”. The definition has not significantly changed since 1978. Reference may presently be had on-line to <http://en.wikipedia.org/wiki/Microscope>. “A microscope ... is an instrument for viewing objects that are too small to be seen by the naked or unaided eye.” (word origin information omitted).

It is therefore clear to any person of ordinary skill in the art that “functions of a microscope” or “settings of the microscope”, as in claim 1, must be for a microscope, not for some unrelated or ancillary apparatus or function, e.g. changing intensity or direction of a laser is not a function of a microscope unless it relates to seeing minute objects.

Abe et al. does not disclose or suggest anything at all concerning control of any function of a microscope using a display and in making such an assertion, the Examiner is over extending the reference based upon hindsight application of the present invention beyond any reasonable disclosure or suggestion actually within the Abe et al. reference.

Contrary to the position of the Examiner, Abe et al. **does not** disclose or suggest a device for controlling microscope functions; **does not** disclose or suggest a display (3) integrated into a stand base portion; and **does not** disclose or suggest a display that can be used to perform

settings of the microscope, call saved settings, and display warnings or notifications from the system (see also figs. 1-3). Abe et al is in fact irrelevant to the present invention.

Abe et al does not disclose or suggest any such limitations or requirements.

Abe et al does not disclose or suggest a central display **integrated into the stand base portion**. The display of Abe et al. has a display (control panel 3) integrated into a laser oscillator **1 not into a stand base portion as has always been required by claim 1**. For this reason alone the rejection under 35 U.S.C. 102 must be withdrawn since each and every limitation of the claim must be disclosed in the reference for such an anticipation rejection under 35 U.S.C. 102 to be proper. Further, there is no suggestion at all of incorporating a central display into a stand base portion of a microscope system. In addition there is no disclosure or suggestion of “**a central display is used to perform a plurality of settings of the microscope within the microscope system**” as presented in claim 1 as amended.

The control panel of Abe et al does not appear to be directed to controlling any functions of a microscope and certainly **not a plurality of such microscope functions**. Rather, the control panel of Abe et al is directed to controlling laser treatment energy for laser eye surgery and there appears to be no suggestion of any control of microscope function. The control panel of Abe et al. can in no way be used to control “a plurality” of the functions of a microscope and no such display having such ability is remotely suggested.

It should be further pointed out that new claim 31, depending from claim 1, requires that the plurality of settings that can be performed include at least one of objective selection and secondary magnification. There is absolutely no suggestion in Abe et al of any display or control

capable of performing either of such settings and certainly not in conjunction with other microscopic functions.

The Examiner has rejected claims 3 and 31 under 35 U.S.C. 103 as being unpatentable over Abe (et al) above.

**With respect to claim 3, this is a new ground of rejection not necessitated by any amendment made by the Applicants. All discussion by the Examiner with respect to this new ground of rejection relates to menu structure that was in claim 3 originally. THIS IS THUS AN IMPROPER FINAL REJECTION THAT MUST BE WITHDRAWN.**

In any case the rejection cannot be upheld. After stating that “Abe does not disclose the display to display main, sub-main, and submenus”, the Examiner simply states, without citation of any supporting reference, that “this type of ‘nested’ menu structure is very well known and commonly used in display systems. It would have been obvious to use such a menu structure including these types of menus in Abe’s system in order to organize the information and control systems, thus making them easy to use.” There is no discussion at all by the Examiner of their unique use in conjunction with microscopic functions and no cited support for use with microscopic functions or even for their use with anything. The use of such a system to control microscopic functions is unique and unobvious to one skilled in the art, especially within a display in a microscope stand.

With respect to claim 31, the rejection is even more clearly improper. The Examiner states “Regarding claim 31, Abe does not specifically teach the display to control either objective selection or magnification selection.” The Examiner then simply states without any reference in

support, “However, Abe discloses both of these functions in relation to a microscope. It would have been obvious to the ordinary skilled artisan at the time of the invention to use Abe’s display/control to control either or both of these functions in order to provide the user with convenient location of all of the controls of the system, thus making the system more efficient and compact.”

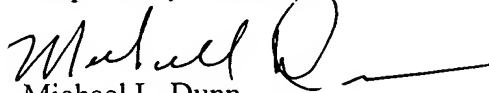
**This is impermissible hindsight at its most egregious.** Abe et al does not disclose or suggest the use of a display to control microscope functions at all, yet the Examiner takes the unsupported hindsight position that it would be obvious to take manual controls from a microscope associated with the Abe et al. structure and incorporate them into a display that Abe et al only uses for treatment lasers. If the advantages are so clear, as the Examiner would have us believe, why did Abe et al. not actually incorporate microscopic controls into the display. The answer is clear, prior to the present invention, it was not obvious to one skilled in the art from Abe et al., to incorporate microscope controls into a display and certainly not within a microscope stand.

The rejections should be withdrawn, claims 1, 3 and 31 should be allowed and claims 4-13 depending from claim 1 should be rejoined and also allowed.

**Conclusion**

Applicant therefore respectfully submits that all pending claims are now in condition for allowance, which action is courteously requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael L. Dunn", with a long horizontal flourish extending to the right.

Michael L. Dunn  
Registration No. 25,330  
Simpson & Simpson, PLLC  
5555 Main Street  
Williamsville, NY 14221-5406  
Telephone No. 716-626-1564

MLD/mjk

Dated: October 27, 2006